

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

IGNACIO VARGAS

Claimant

VS.

MILLARD REFRIGERATED SERVICES

Respondent

AND

SENTRY INSURANCE COMPANY

Insurance Carrier

Docket No. 222,104

ORDER

Claimant requests review of an Award entered by Administrative Law Judge Pamela J. Fuller on April 4, 2000.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared on behalf of claimant. Gary A. Winfrey of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has reviewed the record listed in the Award and has, in addition, reviewed the deposition of Dr. Dean K. Wampler. The parties have stipulated that Dr. Wampler's deposition was intended to be part of the record before the Administrative Law Judge and that the Board may consider Dr. Wampler's deposition for purposes of this appeal.

ISSUES

The Administrative Law Judge found claimant failed to prove that his injury arose out of and in the course of his employment. Claimant appeals that finding. Claimant makes no claim for permanent disability but asks that respondent be ordered to pay his medical expenses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

Claimant contends that he slipped and ruptured a muscle while working. According to claimant, the rupture caused a hematoma that became infected. Claimant does not seek permanent disability benefits but seeks to recover the cost of treating this infection. There is substantial reason to doubt claimant's version of the ruptured muscle. But the Board concludes that even if claimant did suffer an injury at work as alleged, the infection was not caused, aggravated, or accelerated by the work injury, ruptured muscle or hematoma.

Claimant's explanation for the cause of the infection is supported by testimony from Dr. J. Raymundo Villanueva. Dr. Villanueva had examined claimant at the request of claimant's counsel. But the Board finds more convincing the testimony and opinions of other physicians who testified in this case. Dr. Wampler, who examined claimant at respondent's request, testified the infections would have to be introduced into the skin. He did not consider it to make physiologic sense for a muscle tear to allow bacteria to enter the skin. He testified the infection probably entered through a hair follicle and was not related to claimant's work or injury at work.

Dr. Frederick R. Smith examined the claimant at the request of the Administrative Law Judge. He found no evidence that there ever had been a hematoma, only redness. He found no clear explanation for the infection but considered it unlikely that it was work related.

The Board concludes claimant has not proven by a preponderance of the credible evidence that the infection was related to his work.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller on April 4, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Gary A. Winfrey, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director